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5 UNITED STATES DISTRICT COURT

6 FOR THE WESTERN DISTRICT OF WASHINGTON

7 STATE OF WASHINGTON; STATE OF  
8 CONNECTICUT; STATE OF MARYLAND;  
9 STATE OF NEW JERSEY; STATE OF NEW  
10 YORK; STATE OF OREGON;  
11 COMMONWEALTH OF  
12 MASSACHUSETTS; COMMONWEALTH  
13 OF PENNSYLVANIA; and the DISTRICT OF  
14 COLUMBIA,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF  
18 STATE; MICHAEL R. POMPEO, in his  
19 official capacity as Secretary of State;  
DIRECTORATE OF DEFENSE TRADE  
CONTROLS; MIKE MILLER, in his official  
capacity as Acting Deputy Assistant Secretary  
of Defense Trade Controls; SARAH  
HEIDEMA, in her official capacity as Director  
of Policy, Office of Defense Trade Controls  
Policy; DEFENSE DISTRIBUTED; SECOND  
AMENDMENT FOUNDATION, INC.; and  
CONN WILLIAMSON,

20 Defendants.

21 The Honorable Robert S. Lasnik

22 No. 2:18-cv-01115-RSL

23 MOTION OF DEFENSE DISTRIBUTED,  
24 SECOND AMENDMENT FOUNDATION,  
25 AND CONN WILLIAMSON  
26 FOR JUDGMENT ON THE PLEADINGS

NOTE FOR CONSIDERATION  
November 2, 2018

ORAL ARGUMENT REQUESTED

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## I. INTRODUCTION

The “Private Defendants”—Defense Distributed, the Second Amendment Foundation, and Conn Williamson—do not belong in this action. The Plaintiff States assert Administrative Procedure Act (“APA”) and Tenth Amendment claims against the Government Defendants and the Plaintiffs States seek a judgment awarding relief against the Government Defendants. But the Plaintiff States assert no claims against the Private Defendants, seek no relief against the Private Defendants, and have effectively conceded that the Private Defendants are not necessary parties. Hence, the Private Defendants respectfully request that the Court enter a judgment on the pleadings dismissing them from this action.

## II. PROCEDURAL HISTORY

This lawsuit entails a dispute between the Plaintiff States and Government Defendants. The Private Defendants have no official stake in it. The pleadings establish this clearly.

The Plaintiff States filed their First Amended Complaint (“FAC”), on August 2, 2018. Dkt. 29 (hereinafter “FAC”). The FAC asserts no causes of action against the Private Defendants. Nor does the FAC seek relief against any of the Private Defendants.

The FAC does, however, allege that each of the Private Defendants “is a necessary party as the Settlement Agreement that it entered into with the [Government] Defendants may be affected by the requested relief, and this may impede [the Private Defendants’] interests under that Settlement Agreement.” FAC at ¶¶ 24-26. But in pleadings and at oral argument on the Plaintiff States’ Motion for Preliminary Injunction, the States effectively acknowledged that the Private Defendants are not “necessary parties” under the applicable standards.

The Private Defendants' answered the FAC on August 20, 2018. Dkt. 81. They denied that any one of the Private Defendants is a necessary party, *Id.* at ¶¶ 24-26, and at oral argument on the Plaintiff States' Motion for Preliminary Injunction, the Private Defendants maintained nothing more than bystander status.

1 The Government Defendants answered the FAC on October 9, 2018. Dkt. 112. They  
2 took “no position on whether Defense Distributed is a necessary party.” *Id.* at ¶ 24.

### III. ARGUMENT

#### **4 | A. Legal Standard.**

5 Defense Distributed, the Second Amendment Foundation, and Conn Williamson move  
6 for a judgment on the pleadings dismissing them from this action with prejudice. *See* Fed. R.  
7 Civ. P. 12(c). Well-established standards of review apply:

8 Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are  
9 closed but within such time as not to delay the trial, any party may move for  
10 judgment on the pleadings.” The same legal standard applies to a motion for  
11 judgment on the pleadings as to a motion to dismiss for failure to state a claim.  
12 Thus, the Court must accept as true all material facts alleged in the pleadings  
and draw all reasonable inferences in favor of the nonmoving party. Judgment  
on the pleadings is proper when the moving party clearly establishes on the face  
of the pleadings that no material issue of fact remains to be resolved and that it  
is entitled to judgment as a matter of law.

<sup>14</sup> *Dacumos v. Toyota Motor Credit Corp.*, 287 F. Supp. 3d 1152, 1154 (W.D. Wash. 2017) (citations and quotations omitted); *accord Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

16 During the temporary restraining order and preliminary injunction proceedings, the  
17 Court certainly had the authority to hear from the Private Defendants as bystanders (amicus  
18 curiae). *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982); *United States v. Michigan*,  
19 116 F.R.D. 655, 660 (W.D. Mich. 1987). But now that the Private Defendants have squarely  
20 requested dismissal, the Court should grant the motion because the FAC states no claim against  
21 the Private Defendants and because the Private Defendants are not necessary parties in any  
22 other respect.

**B. The Complaint States No Claim Against Any Private Defendant.**

24 First and most importantly, the FAC pleads no cause of action against and seeks no  
25 relief against the Private Defendants. To reach this conclusion, the Court need not engage in  
26 the sometimes-complex tasks of determining whether a pleaded action is “plausible on its face”

1 or “speculative.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The FAC literally  
 2 states no claim whatsoever against any Private Defendant.

3 The APA actions presented in Counts I-III address nothing but alleged acts and  
 4 omissions of the “Government Defendants.” FAC at ¶¶ 218-240. None of those Counts states  
 5 (or possibly could state) a claim against the Private Defendants.

6 Count IV does not pertain to the Private Defendants either. It alleges a violation of the  
 7 Tenth Amendment of the United States Constitution. FAC at ¶¶ 241-247. But just like Counts  
 8 I-III, each allegation in Count IV addresses the “Government Defendants” supposed  
 9 wrongdoing. FAC at ¶¶ 241-247. No Private Defendant could violate the Tenth Amendment,  
 10 and the FAC does not allege that they did so.

11 Accordingly, the FAC’s prayer seeks a judgment pertaining only to the Government  
 12 Defendants, not the Private Defendants. First, it asks the Court to hold unlawful actions taken  
 13 by the Government Defendants. FAC 73-74 ¶¶ a-c. Nothing about this request pertains to  
 14 actions taken by the Private Defendants.

15 Next, the FAC’s prayer requests an injunction ordering “Defendants” to “rescind the  
 16 ‘temporary modification’ of the USML Category I and to rescind the approval of the CAD  
 17 files for public release,” FAC at 74 ¶ d, and an associated injunction “prohibiting Defendants  
 18 and anyone acting in concert with them from taking any action inconsistent with the  
 19 rescission.” FAC at 74 ¶ e. But since the Private Defendants did not take part in the actions  
 20 to be rescinded—the FAC acknowledges that the Government Defendants have sole  
 21 responsibility for both actions—neither of the sought-after injunctions can possibly run against  
 22 the Private Defendants.

23 Thus, this action’s only true defendants are the Government Defendants. The lack of a  
 24 claim against the Private Defendants warrants their dismissal. *See, e.g., Murphy v. Bank of*  
*25 New York Mellon*, No. C14-955 RSM, 2015 WL 11675672, at \*1 (W.D. Wash. May 28, 2015).

1    **C. The Private Defendants Are Not Necessary Parties Under Rule 19.**

2        Federal Rule of Civil Procedure 19 governs the issue of “Required Joinder of Parties.”

3        It supplies two categories of necessary parties. Under Rule 19(a)(1)(A), a person is a necessary  
 4        party if a court cannot accord complete relief among existing parties without them, and under  
 5        Rule 19(a)(1)(B), a person is a necessary party if they claim a certain interest in the case and  
 6        either their involvement is required to protect their interest or their absence would subject other  
 7        parties to multiple or inconsistent obligations:

8            **(1) Required Party.** A person who is subject to service of process and whose joinder  
 9        will not deprive the court of subject-matter jurisdiction must be joined as a party if:

10              **(A)** in that person's absence, the court cannot accord complete relief among  
 11        existing parties; or

12              **(B)** that person claims an interest relating to the subject of the action and is so  
 13        situated that disposing of the action in the person's absence may:

14                  **(i)** as a practical matter impair or impede the person's ability to protect  
 15        the interest; or

16                  **(ii)** leave an existing party subject to a substantial risk of incurring  
 17        double, multiple, or otherwise inconsistent obligations because of the  
 18        interest.

19        Fed. R. Civ. P. 19(a). None of Rule 19's provisions apply here.

20            **1. The Private Defendants Have No Interest Protected By this Action.**

21        Rule 19(a)(1)(B)(i) designates a party as necessary if “that person claims an interest  
 22        relating to the subject of the action and is so situated that disposing of the action in the person's  
 23        absence may . . . as a practical matter impair or impede the person's ability to protect the  
 24        interest . . .” Fed. R. Civ. P. 19(a)(1)(B)(i). Rule 19(a)(1)(B)(i) does not apply here because  
 25        the Private Defendants claim no such interest in the subject of this action. Rule 19(a)(1)(B)(i)  
 26        also does not apply here because, even if any such interest had been claimed, the Private  
 27        Defendants' absence does not impede their ability to protect it.

1       The FAC alludes to this provision by alleging that each Private Defendant “may be  
 2 affected by the requested relief” because the relief “may impede” each Private Defendants’  
 3 interest in a contract—the settlement agreement between the Private Defendants and  
 4 Government Defendants in the Texas litigation. FAC ¶¶ 24-26. But as the Private Defendants,  
 5 the Plaintiff States, and this Court have all now recognized, the settlement agreement is not  
 6 this action’s true subject and this action will neither assail nor protect the Private Defendants’  
 7 interest therein. Rule 19(a)(1)(B)(i)’s test is not met.

8       A Rule 19 necessary party is one who “claims an interest relating to the subject of the  
 9 action” that can be protected only if they are a party. Fed. R. Civ. P. 19(a)(1)(B) (emphasis  
 10 added). Yet the Private Defendants do *not* claim such an interest because their settlement  
 11 agreement rights are not at issue in this action and need not be protected by it.

12      To the contrary, each Private Defendant has denied the Plaintiff States’ Rule 19  
 13 allegations in their answer. See Dkt. 81 at ¶¶ 24-26. In no uncertain terms, the Private  
 14 Defendants have *disclaimed* the FAC’s allegation that any interest they have relating to the  
 15 subject of the action might be practically impaired or impeded by their absence from the action.

16      Because of that denial, none of the Private Defendants count as a person that “claims”  
 17 a Rule 19(a)(1)(B) interest. See *United States v. Bowen*, 172 F.3d 682, 689 (9th Cir. 1999)  
 18 (Rule 19(a)(1)(B) requires that the interest be affirmatively claimed); *Thomas, Head and*  
 19 *Greisen Employees Trust v. Buster*, 95 F.3d 1449, 1460 n. 18 (9th Cir. 1996) (same); *United*  
 20 *States ex rel. Morongo Band of Mission Indians v. Rose*, 34 F.3d 901, 908 (9th Cir. 1994)  
 21 (same).<sup>1</sup> Standing alone, this conclusion stops the application of both Rule 19(a)(1)(B)(i) and  
 22 (B)(ii). See *id.*

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23  
 24      <sup>1</sup> Nor is the Private Defendants’ interest in general administrative law compliance  
 25 sufficient to render them a party “necessary” under the Rule. “[A]n absent party has no legally  
 26 protected interest at stake in a suit merely to enforce compliance with administrative  
 procedures.” *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cnty. v. California*,  
 547 F.3d 962, 971 (9th Cir. 2008). This is equally true as to a named party brought in  
 exclusively under alleged Rule 19 grounds.

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1 Importantly, the Plaintiff States do not disagree with the Private Defendants' view of  
 2 what this action actually pertains to. Despite their complaint's original suggestion, the Plaintiff  
 3 States have since been pressed to agree that the Private Defendants' settlement agreement  
 4 rights are *not* at issue in this action and need *not* be protected by it.

5 The Plaintiff States first acknowledged this during oral arguments about the preliminary  
 6 injunction. At that point in the proceedings, the Private Defendants had noted that, if this case  
 7 attacked their contract with the government, it could fall under the Tucker Act and deprive this  
 8 Court of jurisdiction. The Plaintiff States, arguing for jurisdiction here, insisted that the case  
 9 is not a contract case or challenge to the settlement agreement:

10 This is not a contract case. We said that last time we were here. This is an APA case.  
 11 The reason we included them in the case is that when we balanced the equities, they  
 12 may have an interest in that. And so we wanted them to be heard. And they are here  
 13 making their arguments. But at the end of the day, this is not a contract case at all. We  
 14 are attacking the government's decision to allow these 3D guns to be readily available,  
 15 and the administrative process there. We're not attacking the settlement agreement  
 16 itself.

17 Transcript of August 21 Oral Argument at 46:15-24.

18 The Plaintiff States delivered a similar acknowledgement later. During that same oral  
 19 argument, the Court asked the Plaintiff States to confirm this: "There may be contractual issues  
 20 between Defense Distributed and the federal government, based on the settlement agreement.  
 21 But it's not in front of me and it's not part of this lawsuit is what you're saying?" *Id.* at 46: 25-  
 22 47:3. The States agreed: "That's correct, Your Honor." *Id.* at 47:4.

23 Furthermore, the Joint Status Report prepared by the parties pursuant to Rule 26(f)  
 24 includes the agreement of both the Plaintiff States and Private Defendants that there exist no  
 25 related cases – including the Texas litigation. JSR, Dkt. 110 at 3:14-15.

26

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Finally, two aspects of the Court's own preliminary injunction decision show that the Private Defendants have no Rule 19(a)(1)(B) interest in play here. In challenging the sought-after preliminary relief, the Private Defendants questioned whether the Plaintiff States were raising a collateral attack on the Texas litigation. *See Brief in Opposition to Motion for Preliminary Injunction*, Dkt. 63 at 8:20-10:2. The Court's preliminary injunction decision rejected this argument with reasoning that translates to the Private Defendants' status here:

The reasons the States would likely not have been permitted to intervene in the prior litigation is that they were not necessary parties, they had no right to appear simply because they were interested in its outcome, their claim had nothing to do with the facts or law at issue between the existing parties, and their APA-based objections could be heard and their interests protected in a separate litigation with the federal defendants.

*Washington v. United States Dep't of State*, 318 F. Supp. 3d 1247, 1256 (W.D. Wash. 2018). Similarly, the Court's preliminary injunction decision also acknowledges that, if this action's judgment puts the Government Defendants in breach of the settlement agreement, the resulting contract-based interests would be protected not in this case, but in a *separate* litigation with the Government Defendants:

If, as plaintiffs allege, the federal defendants exceeded their authority in entering into the settlement agreement with the private defendants, they are entitled to file suit under the APA and seek appropriate redress. If the remedy afforded in this litigation impinges on the federal defendants' ability to perform under their settlement agreement with the private defendants, the latter may have a breach of contract claim against the former, but there is no jurisdictional bar to this litigation in the circumstances presented here. The dismissal of the Texas litigation is not under attack: rather, the States are challenging the adequacy of agency action.

*Id.*

## 2. No Party Will Incur Inconsistent Obligations.

Rule 19(a)(1)(B)(ii) designates a party as necessary if "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may . . . leave an existing party subject to a substantial risk of incurring double,

1 multiple, or otherwise inconsistent obligations because of the interest.” Fed. R. Civ. P.  
 2 19(a)(1)(B)(ii). In addition to the lack of a “claim” explained above, Rule 19(a)(1)(B)(ii) does  
 3 not apply here because the Private Defendants’ absence puts no one at risk of double, multiple,  
 4 or otherwise inconsistent obligations.

5 The Government Defendants must comply with the APA as a matter of law, and nothing  
 6 in the settlement agreement says otherwise. To the contrary, the settlement agreement  
 7 expressly requires that the Government Defendants perform their obligations thereunder in  
 8 compliance with the APA. *See Settlement Agreement*, Dkt. 8-3, at ¶ 1(a). There is no risk of  
 9 inconsistent obligations at all, let alone one that can be linked to the Private Defendants’  
 10 absence.

### 11       **3. Plaintiff States Can Obtain Complete Relief from the Government.**

12 Rule 19(a)(1)(A) deems a party as necessary if, “in that person’s absence, the court  
 13 cannot accord complete relief among existing parties.” Fed. R. Civ. P. 19(a)(1)(A); *see, e.g.,*  
 14 *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004)  
 15 (“In conducting the Rule 19(a)(1) analysis, the court asks whether the absence of the party  
 16 would preclude the district court from fashioning meaningful relief as between the parties.”).  
 17 Rule 19(a)(1)(A) does not apply here because the Court can afford complete relief among  
 18 existing parties without the Private Defendants.

19 As noted above, the Plaintiff States pursue causes of action solely against the  
 20 Government Defendants, and the APA-based relief they seek is only available from the  
 21 Government Defendants. The Private Defendants can neither supply the Plaintiff States their  
 22 requested relief nor impede any relief that the Court awards by way of a judgment against the  
 23 Government Defendants. As such, in the absence of the Private Defendants, the Court can still  
 24 offer the Plaintiff States and the Government Defendants complete relief. *See id.*

## IV. CONCLUSION

For these reasons, the Private Defendants respectfully request that the Court issue a judgment dismissing them from the action with prejudice.

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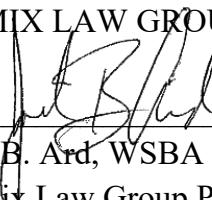
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## **CERTIFICATE OF SERVICE**

I certify that on October 11, 2018, I filed the foregoing with the Court's CM/ECF system, which will give notice to all parties and counsel of record. I CERTIFY UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct.

DATED this October 11, 2018.

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